



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Lieutenant Jose Briceno : ORDER
Tax Registry No. 934556 : OF
Brooklyn Court Section : DISMISSAL
-----X

Lieutenant Jose Briceno, Tax Registry No. 934556, having been served with written notice, has been tried on written Charges and Specifications numbered 2021-24031, as set forth on form P.D. 468-121, dated September 23, 2021 (amended December 23, 2021), and after a review of the entire record, Respondent is found Guilty of the charged misconduct.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Lieutenant Jose Briceno from the Police Service of the City of New York.


KEECHANT L. SEWELL
POLICE COMMISSIONER

EFFECTIVE: 11/28/22



POLICE DEPARTMENT

August 22, 2022

-----X
In the Matter of the Charges and Specifications :

- against - :

Lieutenant Jose Briceno :

Tax Registry No. 934556 :

Brooklyn Court Section :

Case No.

2021-24031

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Josh Kleiman
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Kathryn Falasca, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Hugo G. Ortega, Esq.
Tanner & Ortega, LLP
299 Broadway, Suite 1700
New York, NY 10007

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Lt. Jose Briceno assigned to the Office of Equity and Inclusion, on or about and between October 1, 2020 and September 22, 2021 did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Lt. Briceno did engage in inappropriate conduct of a sexual nature toward a female whose identity is known to the Department, in that he made inappropriate sexual gestures, made inappropriate sexual remarks, sent inappropriate text messages, touched the individual inappropriately, sent her photos of his genitals and engaged in a course of behavior that caused the individual to feel uncomfortable on numerous occasions. *(As amended)*

A.G. 304-06

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

P.G. 205-36

EMPLOYMENT DISCRIMINATION
SEXUAL HARASSMENT

P.G. 205-37

HOSTILE WORK ENVIRONMENT
DISPLAY OFFENSIVE MATERIALS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 1 and 2, 2022. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Complainant¹ and Sergeant Fuhad Hussain as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty and recommend that Respondent be DISMISSED from the New York City Police Department.

ANALYSIS

Respondent, a supervisor and Integrity Control Officer in the Department's Office of Equity and Inclusion, is charged with making inappropriate remarks, displaying inappropriate

¹ The Complainant's name is known to the Department.

images, and inappropriately touching, Complainant, a subordinate under his direct supervision. At trial, Respondent admitted to engaging in the inappropriate conduct alleged, save touching Complainant inappropriately, clarifying that while he had touched Complainant, on several occasions at their workplace, he did not consider the touching to be inappropriate. While Respondent agreed that showing Complainant, while she staffed the front desk of their command, a video of himself having sex with another woman, and later text messaging her a photograph of his genitals, was inappropriate, he, nevertheless, believed he was not guilty of the charged misconduct because his perception, at the time of this conduct, was that he and Complainant were involved in a mutually flirtatious and consenting relationship. At trial, however, Respondent admitted that in hindsight he may have been mistaken.

As set forth in more detail below, the Tribunal finds that the undisputed conduct in which Respondent engaged is egregious and wholly inappropriate for a supervisor in Respondent's position and the Tribunal credits the highly credible testimony of Complainant that Respondent's relentless sexualized behavior was neither wanted nor invited, causing her to suffer emotional distress. Given the manifestly inappropriate behavior evidenced by Respondent's actions in this disciplinary matter, coupled with the position of trust and sensitivity in which Respondent served, the Tribunal recommends that Respondent be Dismissed from the Department.

Factual Background

The following facts are not in dispute. Between October 1, 2020 and September 22, 2021, Respondent and Complainant were assigned to the Office of Equity and Inclusion ("OEI"), a division of the Department tasked with developing and implementing the Department's sexual harassment programs and policies, including receiving and investigating complaints of workplace sexual harassment. Respondent's duties during this time period included general supervisory responsibilities in connection with Respondent, including assigning overtime and

details, handing out parking permits, reviewing vacation time requests, and assisting the Commanding Officer with command-level discipline. It is undisputed the two were never involved in a romantic relationship. (Tr. 48-49, 310)

In or about October 2020, Respondent and Complainant began exchanging text messages of a sexually-suggestive nature. The first such exchange in the record appears on October 20, 2020, and reads as follows:

Complainant: U . . . Alive
Respondent: Im getting dressed
Respondent: You worried about me
Complainant: Making sure
Complainant: He filled out ra
Complainant: Heads up
Respondent: Cause he is a loser
Respondent: Hes your boy
Complainant: You hired him
Complainant: U aint a good picker
Complainant: Hurry get dressed let me know if u need help
Respondent: With getting dressed?
Complainant: It's a joke
Complainant: Haha laugh
Complainant: Forget it
Respondent. I need help taking them off.
Complainant: That's easier
Respondent: Yeap
Respondent: Now you play doctor?
Complainant: A nurse lol
Respondent: You got the outfit.
Respondent: Only if you do it with me.
Respondent: But I dont think we resting
Complainant: I don't have it.
Complainant: U can be a LT lol
Respondent: You wanna play the perp or my female cop assistant
Respondent: Lol
Complainant: I think u prefer me being a perp
Respondent: I like either one Ill be nice in private
Complainant: can u ever trust me even if Im just a detective
Respondent: Yeah I trust you

Complainant: U smell good u took shower
Respondent: I[] always take a shower.
Respondent: I let you come closer to smell me.
Complainant: I did I smelled u earlier [which] cologne is that?
Complainant: U copying mike.
Respondent: No. I smell unique v
Respondent: That's my natural smell
Complainant: uhuh No that's cologne
Respondent: Well you gonna have to find out
Respondent: You know you want to
Complainant: Plead the 5th lol
Complainant: Maybe
Respondent: I think we are passed that
Complainant: Maybe
Respondent: I smell u and you smell me.
Respondent: Ill come down in a few to smell you. Lol
Complainant: I'm going to gym soon come later
Respondent: You will enjoy it.
Complainant: The gym or u sniffing
Respondent: Both . . . Let me know when it's time to smell you
Complainant: I didn't leave yet in few ima go down
Respondent: You want me to go now
Complainant: Too many witnesses
Respondent: Later then
Respondent: Never seen you this excited.
Complainant: u haven't been mean that's why duh
Respondent: I was never mean
Respondent: So I get a reward for being nice right
Complainant: Maybe
Complainant: U have to be permanently nice
Respondent: So I gotta do more
Complainant: U have done a lot tho
Complainant: Im shocked too
Respondent: Enough
Respondent: You still here
Complainant: No I was waiting for u u never came
Complainant: So I left
Complainant: Took shower for nothing
Respondent: Sorry. I had a meeting at 3 and you never told me you stop working out.
Respondent: Ill smell you tomorrow. Anything else you want me to do.

(Dept. Ex. 1 at 62-79).

Later that evening, they continued to exchange sexually suggestive messages:

Respondent: Did you get furniture
Complainant: Pissed they delivered reg sofa instead of sofa bed . . .
Respondent: Its big enough for me to sleep in.
Complainant: The small one
Respondent: Either one. You joining me right?
Complainant: [nervous laugh emoji]
Respondent: What time am I gonna smell you tomorrow?

(*Id.* at 80-81).

The next day, however, Complainant began to express hesitation with Respondent's suggestions that they should consummate a physical relationship:

Complainant: Bright n early
Respondent: Make it worth my while to get up
Respondent: [kissing face]
Respondent: [winking face]
Respondent: You want the real thing, don't ya?
Complainant: Lmaoo
Complainant: Not sure yet
Respondent: Lol
Complainant: Its risky
Respondent: The answer is yes
Complainant: Yes!
Complainant: Lmao
Respondent: I dont gave cutties
Respondent: Yes it's risky
Complainant: That's the thing, I'm a shake box
Respondent: We will see what happens
Respondent: Ill come down later and let you smell me some more
Respondent: So you just left without saying goodbye.
Respondent: I still haven't smelled you
Complainant: Exactly why I was waiting [joking face]. Instead all I got was a wiff of ur feet powder
Respondent: Depending on how you smell i might not be able to control myself

Complainant: Ill use mikes Abercrombie cologne
Respondent: I don't think you ready for that
Complainant: Prob not
Respondent: Ill do whatever you let me.
Complainant: Not much then
Complainant: I can tell ur a freak
Respondent: Im not a freak.
Complainant: U have to be
Complainant: U seem it lol
Respondent: Why cause I like the way a girl smells. Thats a turn on. Just like my smell turns you on.
Complainant: No by what u said. U wud do whatever.
Respondent: I do what you want. Thats it. Nothing more nothing less. Thats not a freak. Thats a gentlemen. . . .

(*Id.* at 81-95).

The following day, as Respondent's comments grew more direct, Complainant made clear to Respondent that she did not want their relationship to become physical:

Respondent: I still like you even of you are a Trump supporter. You can still get it.
Complainant: I went to gym already
Respondent: Got your sweat on.
Complainant: Yup
Respondent: Ill give you a work out later.
Respondent: Ill do bench presses with you.
Respondent: You down.
Respondent: Ill lift you.
Complainant: I weigh more than u tho
Respondent: No you don't. I weigh 155.
Respondent: I didn't invite them to my house. I going in and out. Real quick. When you come over you it won't be quick.
Complainant: Uhuh
Respondent: Come over tonight then.
Complainant: I cant I work early tom
Respondent: Leave from my house. 20 minute commute.
Complainant: That's tru
Complainant: I cant tho ill take a raincheck
Respondent: Sure
[Five hours later]

Complainant: Hi so next week in uniform?

Respondent: Yes.

Complainant: K k. I'll wear my polo shirt. Jk

Respondent: An ill make you take it off in front of me.

Complainant: I'll leave the bra on tho

Respondent: Ill take that off

Complainant: [nervous laugh emoji]

Respondent: You would like that.

Complainant: U think so

Respondent: If I do it with my mouth

[Complainant changes subject to a workplace matter and a brief exchange occurs]

Respondent: So let me know about that bra thing.

Complainant: Well that's the thing I think we shud just not go messing around like that

Complainant: I don't want drama later

Complainant: U look like drama king

Respondent: Okay. Thats up to you.

Complainant: K

(*Id.* at 102-07).

The next day, Respondent sought to revisit their conversation:

Respondent: I make you nervous

Complainant: Well ur my boss

Complainant: Duh

Complainant: Sorta

Respondent: No reason

Respondent: For that

Complainant: K

(*Id.* at 113-14).

Complainant further recalled that in October 2020, when Complainant asked Respondent for help uploading Covid-related information, Respondent replied that the problem would go away if she was "artificially inseminated" by him. Respondent admitted that this exchange occurred. (Tr. 101, 354)

In December 2020, Respondent sought to revisit the concept of spending time together outside of work:

Respondent: You not coming tomorrow
Complainant: Range!
Complainant: In tunnel
Respondent: We should hang out on Saturday
Complainant: How I get out late and then everything closed by 10
Complainant: I'll let you know
Respondent: I wasn't asking I was telling you.
Respondent: You want to spend the whole day with me don't you.
Respondent: Just say yes.
Respondent: Just say yes.
Complainant: Not really
Respondent: Lol
Respondent: But you wanna spend some time with me.
Respondent: You want me to beg?
Complainant: I'm jk
Complainant: No
Complainant: We will hang eventually

(*Id.* at 149-53).

Five days later, Respondent engaged in the following exchange with Complainant:

Respondent: So I'm not gonna talk to you at work. You okay with that.
Complainant: Ok
Respondent: Just like that you give up
Complainant: U saying I'm respecting ur wish
Complainant: U saying that I didn't !
Respondent: I'm confused.
Respondent: I'm not gonna stop talking to you.
Complainant: I never said don't talk to me I just said don't do anything creepy
Complainant: That can draw attention
Complainant: I think that's valid
Respondent: I will do that I don't want to make you feel uncomfortable
Complainant: Ok
Complainant: We can still talk tho!
Complainant: If u want I mean
Respondent: Of course.

Respondent: Ill just be creepy over text
Respondent: But no dick pics.
Respondent: So you want the dic pics
Respondent: Ill send random ones. Ill google some
Complainant: I'm home
Respondent: Okay. Dic pics coming.
Respondent: You like big, small, white, black???
Complainant: Lmaoo
Respondent: I want to send the right one.
[Complainant discontinued the conversation]

(*Id.* at 160-65).

The next evening, during a text message conversation about Respondent's attitude at work, Respondent initiated the following exchange:

Respondent: I'm watching porn.
Complainant: But when u talk like that we think u dont
Complainant: Then we dont either
Complainant: What porn u like
Respondent: Girl on girl
Complainant: Is it true guys like girls to eat their ass I learned that today
Complainant: So weird
Complainant: Thats so nasty
Respondent: You never had you ass eaten.
Complainant: I rather die
Complainant: No I said girl on guy
Complainant: Weird af
Respondent: I have it done. Its not bad
Complainant: Girls ate ur ass
Respondent: You have you had it done to you
Respondent: Yeah
Complainant: Yeah lil
Respondent: And you like it.
Complainant: Yea but that's just weird on a guy
Complainant: Sorta gayish
Respondent: Its not
Respondent: You not putting a finger in my butt
Complainant: So licking is ok but not fingers
Complainant: Ughh
Complainant: Its all so weird n gay

Respondent: But I can lick your ass and thats okay. And maybe more.
Complainant: Lmaoooo
Complainant: I'm not licking ur ass tho
Respondent: Okay so when you bend over Im going to town
Respondent: You gotta tell what I can and cant do.
Complainant: No ass fuckin
Respondent: Just ass licking.
Respondent: How about a finger.
Complainant: Gentle yup.
Respondent: Okay. Ill be gentle.
Respondent: Ill be romantic.
Respondent: I like to kiss.
Respondent: What you like?
[Complainant discontinues the conversation]

(*Id.* at 179-87).

A month and a half later, Respondent sent a text message to complainant telling her, "We need alone time outside work." Complainant responded, "na we gona be fighting u argue too much." When Complainant requested Respondent to remove a letter of instruction from her file after one year, Respondent replied that he would do so if she sat in his lap. (Tr. 60-62, 76, 81-82, 154, 278; Dept. Ex. 1 at 202, 205).

In February 2021, while Complainant was manning the front desk of the Office of Equity and Inclusion on the twelfth floor of One Police Plaza, Respondent approached her and asked if he could show her a video of himself having sex with another female. Complainant testified that she "gestured" for him to play the video even though she did not want to see the video. Complainant stated that while watching the video she was "disgusted and completely grossed out and worried . . . because I didn't want to get in trouble, or I didn't want to look like I'm the type of person doing this at work, watching porn." (Tr. 77-80, 295, 328)

On March 3, 2021, Respondent and Complainant engaged in the following text message exchange:

Complainant: No ur just scared cuz ur talking shit about my disability²
Complainant: No bueno
Respondent: I showed you my video you think i care about a disability.
Respondent: Im not sure if you being sarcastic
Complainant: U have trust issues
Complainant: Can I sell ur video make money
Respondent: Only if you are in it.
Respondent: When do you wanna shoot.
Respondent: You van do it from your desk.
Respondent: You tell me where you wanna film.
Complainant: [sends image reading "you're fat"]
Respondent: What?
[Complainant discontinues conversation and does not communicate with
Respondent for a period of 7 days]

(Dept. Ex. 1 at 224-27).

On March 30, 2021, Respondent initiated a text message conversation as follows:

Respondent: I deserve a picture for helping you.
Respondent: Nooo????
Complainant: What kind
Respondent: Whatever you want to send me
Respondent: We can trade pics
Respondent: You already seen mine. You saw the video. . . .
Respondent: Ill send you if you promise not to send it to [].
Complainant: Of course I won't
Complainant: U don't have to send video
Respondent: You want it now.
Respondent: But what are you gonna send me?
Respondent: What time you gonna leave
[Respondent sent a picture of his genitals]
Respondent: You love it I see
[Complainant discontinued conversation]

At trial, Complainant testified that, on multiple occasions, Respondent requested to send photographs of his genitals to her. The requests began in-person and continued over text

² At trial, Complainant explained that she had heard gossip that Respondent told people that she was faking a wrist injury. At the time, Respondent had been placed on Restricted Duty due to the injury. (Tr. 64).

messages. Respondent asked for photographs in return as well. Complainant indicated that Respondent would typically say, “Do you want to see a dick pic? . . . You didn’t say anything. You don’t respond. I keep asking you, but you don’t say anything.” She testified that she would reply with smiles or giggles because she did not want to outright deny him for fear of repercussions. After Respondent continued to persist, however, in his requests, Complainant finally responded, “Just go ahead and send it.” On March 30, 2021, at approximately 5pm, Respondent sent her a text message containing a photograph of his penis. At trial, Respondent admitted doing so. (Tr. 62-63, 74-75, 87, 325; Dept. Ex. 2 at 28)

No messages were exchanged by Respondent and Complainant for a period of eight days after he sent her the “dick pic.” On the ninth day, Complainant and Respondent engaged in the following exchange:

Complainant: Yo I opened text and ur dick popped up Imao. . . .
Respondent: Come sit on my lap. . . .
Respondent: We can do it in [] office
Respondent: I don’t need it
Complainant: You going to meeting
Respondent: Yeah
Complainant: Elevators r all packed ugh
Complainant: Sorry I’m late
Respondent: You know what you gotta do to make it up to me.
Complainant: Ima get u some fried chicken.
Respondent: While you sit on my lap.
Respondent: You don’t want to sit on my lap.
Complainant: We will never know.
Complainant: Plead the 5th.
Respondent: So then why I am talking to you then.

(Dept. Ex. 2 at 233-37).

On April 14, 2021, Complainant told Respondent, “U don’t wana sign off on our cases . . . We have tons of cases. We can’t afford ur boy deny them all. Do it for the people.”

Respondent replied, “Show me boobs and I’ll sign off all of yours.” (Dept. Ex. 3)

Complainant testified that on several occasions Respondent also touched her inappropriately. In July 2021, Respondent commented on Complainant's tan. He then caressed her arm. She testified that she was "grossed out, repulsed and scared at the same time." On another occasion, when Complainant had her hair down, Respondent touched her hair, telling her he liked her curls. He later touched her back and arm while standing uncomfortably close to her. Respondent also poked her in the stomach on more than one occasion. Respondent admitted to touching each of these areas of her body, except for her hair, which he did not recall touching. (Tr. 98-100, 272-73, 342-43)

Complainant testified that on September 21, 2021, while she was seated at her work desk, Respondent approached her desk, leaned over, and rubbed his hands up her back, making her feel uncomfortable. She was worried that another sergeant at her command, Sergeant Fuhad Hussain,³ might have seen this interaction. She decided to speak to him, admitting to him that Respondent was a "pervert" and had sent her inappropriate photos. Sergeant Hussain notified Complainant that he is a mandated reporter, elevating the complaint to IAB (Tr. 105-09).

Later that day, when Respondent returned to her floor, Complainant notified Sergeant Hussain that she did not want to be alone with him. She subsequently informed Sergeant Hussain via text message, "He touched my arm again. Lmao he don't stop" (Dept. Ex. 5). She continued, "He went into locker room and started some shit, I recorded it, I said ur being inappropriate he said yea only with u" (Dept. Ex. 5). She testified that while in the locker room Respondent

³ At trial, Sergeant Hussain testified that he had previously worked with Respondent as a patrol officer in the 110th precinct. He testified that when Complainant initially approached him with the allegations against Respondent, he was shocked and taken back. He had not seen the interaction between the Complainant and Respondent that Complainant thought he might have seen. Once Complainant continued to divulge information regarding the explicit nature of the text messages she had received from Respondent, Sergeant Hussain knew he needed to report it without hesitation (Tr. 235-37).

further stated, “Don’t be so excited about being alone with me in a room here.” Respondent admitted at trial to speaking these words to her. (Tr. 113-17, 286-87, 341)

Complainant testified that Respondent’s persistent behavior affected both her personal and work life. She experienced difficulty sleeping, would separate herself from her social life and children, and would dwell on what was happening to her. At work, Complainant felt as though people were afraid to speak to her, which caused her to become depressed and isolated. She testified that she is now a more nervous and scared individual (Tr. 121-23).

Respondent testified that he first met Complainant sometime after he arrived at OEI. He explained that their relationship started as strictly work-related. Respondent noted he sent Complainant a friend request on Instagram after she came up as a person he may know. Respondent testified that he began to feel romantically interested in her at the beginning of 2020, when they started texting more. The text messages progressed from professional, to flirtatious, to sexting. Respondent contends that at no point did Complainant mention she was uncomfortable with the direction the conversation was going (Tr. 274- 75).

During his testimony, Respondent admitted that Complainant did not ask to see the video of himself having sex with another female, rather he volunteered it (Tr. 295, 328). He stated that he showed it to her because he thought she would like it (*Id.*). Respondent admitted that the front desk of OEI is also where members of the service go to report sexual harassment (Tr. 329).

Respondent claimed that when he sent inappropriate responses to Complainant or seemed to condition work-related matters on sexual favors, each were examples of him joking around with Complainant (Tr. 276, 278, 288-89, 315-16, 341, 342-43, 350-56, 359-60). Respondent explained that “she made it seem like it was . . . a two-way relationship with the sex and stuff” (Tr. 295). Respondent acknowledged, however, that many of his actions were inappropriate (Tr. 353, 360, 364-65).

Findings:

“It is the policy of the City of New York and the New York City Police Department that all employees are entitled to work in an environment free from unwanted sexual pressures and harassment” (Legal Bureau Bulletin, Vol. 48, No. 2 [February 2018]). Uniformed and civilian members of the NYPD are protected against sexual harassment in the workplace by Title VII of the Federal Civil Rights Act, the New York State Human Rights Law, the New York City Human Rights Law, and Department policy (*Id.*; P.G. 205-36). Additionally, the Department has strict policies against the display of offensive content in the workplace and a strong interest in maintaining a professional decorum in all Department facilities (*see* P.G. 205-37 [now A.G. 332-02]). In those facilities in which public interactions occur and in which special victims may be present, an even higher degree of civility is expected. Furthermore, Department supervisors, managers, and executive staff, are regularly held, and reasonably so, to higher standards of conduct, in order that they may set a good example to those under their stewardship and supervision.

The record of sexual harassment before the Tribunal is unmistakable. Respondent, a supervisor, repeatedly sexualized communications between himself and Complainant, a subordinate. A plain reading of the text message communications between Respondent and Complainant in evidence depict a pervasive effort on the part of Respondent to steer conversations to sexual topics and content. The behavior of Respondent, the then-assigned Integrity Control Officer of the Office of Equity and Inclusion, was so antithetical to the mission of his command and his assignment that it shocks the conscience and constitutes a *per se* violation of the A.G. 304-06, which prohibits conduct prejudicial to the good order, efficiency, and discipline, of the Department. Furthermore, the Department has proven that Respondent’s display of a pornographic film in the workplace is a violation of the Department’s policy

prohibiting the display of offensive materials in Department facilities (P.G. 205-37 [now A.G. 332-02]). Accordingly, the Department has proven the sole specification charged by a preponderance of the credible evidence.

The Tribunal finds Respondent's defense that Complainant never made it obvious to him that she was not interested in him or that his behavior was offensive to her to be unpersuasive. While Complainant often entertained Respondent's efforts to sexualize conversations between himself and Complainant, she repeatedly discontinued conversations that became overtly sexual (such as when Respondent sought pictures from her, when he sent her a picture of his genitals, and when he asked her to detail her sexual preferences) and repeatedly indicated to Respondent that she was uncomfortable with Respondent's efforts to consummate a relationship between her and her "boss." Furthermore, Respondent repeatedly acknowledged to her that he thought he made her "nervous."

This Tribunal is mindful, as Respondent should have been, that victims of sexual harassment may react differently when confronted with behavior such as that directed at Complainant by Respondent. Some may express immediate disapproval and others may tolerate it, often to avoid retaliation. The relevant inquiry is not whether Respondent subjectively understood the inappropriate conduct to be welcome, but whether under the totality of the circumstances a reasonable person would understand the conduct to be unwelcome. Here, Respondent's unrelenting behavior adversely affected Complainant, causing her to become depressed and isolated, and created "an intimidating, hostile, or offensive working environment" for her (Legal Bureau Bulletin at 2).

Respondent is, therefore, found guilty of the sole specification with which he is charged.

PENALTY

In order to determine an appropriate penalty, this tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history was also examined (*see* 38 RCNY § 15-07). Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 9, 2004, with no history of prior discipline, has been found guilty of engaging in a pattern of inappropriate conduct of a sexual nature toward his subordinate, including making inappropriate sexual remarks, sending inappropriate text messages, touching her inappropriately, and displaying offensive material to her. The Tribunal found that the Respondent's behavior rose to the level of sexual harassment as prohibited by P.G. 205-36 (now A.G. 332-01). The Department asks that Respondent's employment be terminated. The Tribunal agrees.

The Disciplinary Guidelines recommend a presumptive penalty of 20 penalty days and 25 penalty days respectively for acts of verbal sexual harassment and acts of sexual harassment consisting of suggestive touching, and an aggravated penalty of Termination for both. The Disciplinary Guidelines further recommend a presumptive penalty of 20 penalty days and an aggravated penalty of 30 penalty days for the display of offensive materials.

Here, there is little doubt that the aggravated penalty of Termination should apply. Respondent was a supervisor in a command that specializes in identifying, investigating, and combating, sexual harassment in the Department (*see, e.g. Disciplinary Case No. 2019-20395* (Aug. 2, 2021) [Police Commissioner noted that, "Based on [the Inspector's] rank, position and role during this particular event I find that the aggravated penalty under the Disciplinary System

Penalty Guidelines (“Matrix”) is appropriate in this matter.”]). Respondent’s behavior was not isolated or minor, but was pervasive, occurring over a lengthy period of time, and was serious in nature. Finally, Respondent’s reprehensible conduct included acts that are so plainly inappropriate, such as Respondent displaying homemade pornography to his subordinate while on duty, and sending a photograph of his genitals to someone he supervises, that Respondent’s behavior evidences an intentional and reckless disregard of Department policy and disdain for the Department’s mission, reputation, and its efforts to cultivate public trust.

The Tribunal, therefore, recommends that Respondent be Dismissed.

Respectfully submitted,



Josh Kleiman
Assistant Deputy Commissioner Trials

APPROVED
NOV 28 2022

KEECHANT L. SEWELL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
LIEUTENANT JOSE BRICENO
TAX REGISTRY NO. 934556
DISCIPLINARY CASE NO. 2021-24031

Respondent was appointed to the Department on July 9, 2004. On his three most recent annual performance evaluations, he received a 4.0 overall rating of “Highly Competent” for 2021 and twice received 5.0 ratings of “Extremely Competent” for 2017 and 2018. He has been awarded one medal for Meritorious Police Duty.

Respondent has no disciplinary history. In connection with the instant matter, Respondent was suspended without pay from September 22 to October 23, 2021. Respondent was also placed on Level 2 Discipline Monitoring in November 2021; that monitoring remains ongoing.

For your consideration.

Josh Kleiman
Assistant Deputy Commissioner Trials